

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-259-C - ORDER NO. 1999-826
NOVEMBER 22, 1999

IN RE: Petition of ITC^DeltaCom Communications,) ORDER DENYING *ver*
Inc. for Arbitration with BellSouth) PETITION FOR
Telecommunications, Inc. Pursuant to the) REHEARING AND
Telecommunications Act of 1996.) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Rehearing and Reconsideration filed by ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom"). By its Petition, ITC^DeltaCom requests rehearing or reconsideration of Commission Order No. 1999-690 in which the Commission rendered its decision on the arbitration proceeding between ITC^DeltaCom and BellSouth Telecommunications, Inc. ("BellSouth"). In its Petition, ITC^DeltaCom alleges numerous errors by the Commission in either the Commission's procedure during the arbitration proceeding or in the Commission's decision on the issues of the arbitration proceeding. Thereafter, BellSouth filed with the Commission a Response to ITC^DeltaCom's Petition for Rehearing and Reconsideration.

Upon consideration of this matter, the Commission is mindful that this matter was instituted by ITC^DeltaCom filing a Petition for Arbitration on June 11, 1999, when ITC^DeltaCom and BellSouth were unable to reach an agreement on interconnection despite participating in good faith negotiations over an extended period of time. The

Petition for Arbitration and resulting proceedings were before the Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (“1996 Act”). As such, the 1996 Act and specifically Section 252(b) of the 1996 Act are the controlling law under which the Commission must decide the matters set forth in the Petition for Arbitration.

Included in Section 252(b) of the Act are certain time frames which are established for actions by the parties and by the Commission. With regard to action by the Commission, Section 252(b)(4)(C) provides that

The State commission shall resolve each issue set forth in the Petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

Thus the Commission has a nine month time limit in which to conclude a Section 252 arbitration proceeding.

ITC^DeltaCom formally requested commencement of negotiations with BellSouth under Section 251 of the 1996 Act on January 4, 1999. *See*, Petition for Arbitration of ITC^DeltaCom, p. 2, ¶ 5. The Petition for Arbitration was filed on June 11, 1999, and thereafter a hearing was held on September 8 – 9, 1999. Following the hearing, the parties submitted proposed orders for the Commission’s consideration. On October 4, 1999, the Commission issued its final order ruling on the open issues then remaining before it.¹ Pursuant to Section 252(b)(4)(C) of the 1996 Act, the Commission had 9 months, or until October 4, 1999, in which to render a decision on the open issues in the

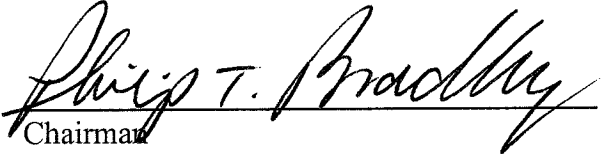
¹ Between the time of filing the Petition for Arbitration and the end of the hearing, the parties resolved a number of issues that had been set forth in the Petition for Arbitration.

arbitration proceeding. The Commission complied with this mandate of the 1996 Act by issuing Order No. 1999-690 entitled "Order on Arbitration" on October 4, 1999.

Being mindful of the statutorily imposed 9 month time limit contained in Section 252(b)(4)(C) of the 1996 Act, the Commission finds that ITC^DeltaCom's Petition for Rehearing and Reconsideration is untimely and falls outside the purview of the Commission. As ITC^DeltaCom's Petition for Rehearing and Reconsideration was filed outside the time frame for arbitration set forth in the 1996 Act which requires the Commission to "conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received a request" for interconnection under section 252 of the 1996 Act, the Commission concludes that it cannot entertain ITC^DeltaCom's Petition for Rehearing and Reconsideration requesting the Commission to either grant a new hearing or change rulings on issues from Order No. 1999-690. Therefore, the Commission denies ITC^DeltaCom's Petition for Rehearing and Reconsideration.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director
(SEAL)